



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMre12121611
EEOC No.: 24F-2013-00115

██████████,
Complainant,

v.

WAL-MART STORES EAST, L.P.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred in this instance. 910 IAC 1-3-2(b).

On December 6, 2012, ██████████ ("Complainant") filed a Complaint with the Commission against Wal-Mart Stores East, L.P. ("Respondent") alleging discrimination on the basis of religion in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e, *et seq.*) and the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter. An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was denied a reasonable accommodation for his religious beliefs. In order to prevail, Complainant must show that: (1) he has a bona fide religious belief that conflicted with an employment requirement; (2) Complainant informed Respondent about the belief and need for an accommodation; (3) Complainant's requested accommodation would not result in more than minimal hardship for Respondent; and (4) Respondent denied Complainant's request for the reasonable accommodation.

By way of background, Respondent hired Complainant in August 2002. At all times relevant to the Complaint, Complainant was scheduled to work Saturdays, Sundays, and Mondays from 5:30am until 6:00pm and at the time of his hire, informed Respondent of his religious belief that he needed to attend religious services every Sunday. Pursuant to Complainant's request, Respondent permitted Complainant to leave work on Sundays and return after his services from August 2002 until August 2012. At all points relevant to the Complaint, Complainant returned to work after the religious services without issue. However, in August 2012, Respondent informed Complainant that he was no longer permitted to leave work every Sunday to attend religious services because five other employees requested similar religious accommodations. Rather, Respondent offered



Complainant and the other associates the option of participating in a rotating schedule with the ability to leave work for services every other Sunday or transferring to the Monday from 6:00pm-4:30am, Tuesday-Thursday from 4:00pm-2:30 a.m. shift. While Complainant participates in the rotating schedule, he is forced to use vacation time in order to attend services on alternating Sundays.

While Respondent contends the continuation of the previous accommodation constitutes an undue hardship, Respondent has failed to provide any evidence that such a hardship exists. Rather, Respondent states "management reviewed [its'] needs and determined that it would create an undue burden if six Associates, including [Complainant], left work every Sunday for several hours." At no point has Respondent provided objective evidence supporting these claims or demonstrating how the practice it previously permitted for 10 years became a hardship for Respondent. Moreover, Respondent's option of a rotating schedule did not eliminate the entire conflict as Complainant has used vacation time to avoid missing religious services on alternating Sundays. To the extent Respondent asserts it offered Complainant an available position on another shift, Respondent failed to provide any evidence of said availability and Complainant alleges no positions were available for Monday through Thursday shift. The mere assumption that an accommodation may create a potential or hypothetical hardship is insufficient to constitute an undue hardship. Although Title VII does not require an employer to grant an employee's preferred accommodation, it requires the employer to provide a reasonable accommodation unless doing so would pose more than a *de minimis* cost or burden. Thus, Respondent's proffered rationale for refusing to continue accommodating Complainant's religious beliefs as it had done for the past 10 years is unworthy of credence and may amount to unlawful discrimination on the basis of religion. Further, no evidence has been provided or uncovered during the course of this investigation to show that the continuation of the practice of permitting Complainant to leave for services and return to work afterwards constitutes an undue hardship to its business needs. As such, probable cause exists to believe that an unlawful discriminatory practice may have occurred due to Complainant's religion.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

December 11, 2013

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission